Service Date: December 1, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MONTANA

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IN THE MATTER OF CITY OF HELENA,) TRANSPORTATION DIVISION Inquiry by the Public Service Commission)

Regarding Transportation of Solid Waste) DOCKET NO. T-99.27.OTH ORDER NO. 6470

PROPOSED ORDER

Nature of this Order

This order of the Public Service Commission (PSC) is a proposed order in the following context. Any person (party) who responded to the September 15, 1999, Notice of Inquiry (NOI) in this proceeding (these parties are the City of Helena, the Montana Solid Waste Contractors Association, and City-County Sanitation, Inc.) may file objections to this Proposed Order. The PSC will consider the objections, if any, prior to issuing a final order in this proceeding. If no party objects within the time specified below, this Proposed Order will at that time become the Final Order in this proceeding, without further action of the PSC.

Objections, if any, must identify the part of this Proposed Order to which the party disagrees, the basis for the disagreement, and the relief requested. Objections must be filed with the PSC within 45 days of the service date of this Proposed Order. Objections must be served on the parties to this proceeding. Responses to objections must be filed and served within 15 days of the date for filing objections. Replies to responses must be filed and served within 15 days of the date for filing of responses.

Background

In June 1995 the City of Helena (Helena) filed before the PSC a

Petition for Declaratory Ruling pertaining to the application of PSCadministered Class D motor carrier laws (provisions within Title 69, Ch. 12,

MCA, pertaining to for-hire transportation of solid waste) to Helena's

transportation of solid waste from Helena's solid waste transfer station to a
local landfill.

Helena's petition was assigned PSC Docket No. T-35.38.DR.

On November 20, 1995 the PSC issued a Declaratory Ruling in the matter, holding that Helena's transportation of solid waste from the transfer station

to the local landfill is regulated motor carriage for which Class D authority is required pursuant to provisions within Title 69, Ch. 12, MCA. In December 1995 the PSC's Declaratory Ruling was appealed by Helena to the Montana First Judicial District Court, Lewis and Clark County, as Cause No. CDV-95-1508. The parties to the appeal (Helena, PSC, and the Montana Solid Waste Contractors Association) agreed that the appeal would be held in abeyance. The appeal remains in abeyance to date.

In the later part of 1998 Helena contacted the PSC concerning the effect that certain provisions within Title 7, Ch. 7, part 44, MCA (the Municipal Revenue Bond Act of 1939 or Bond Act), particularly § 7-7-4407, MCA, might have on the need for Helena to hold Class D motor carrier authority, as that need was established in the PSC's November 20, 1995, Declaratory Ruling. Section 7-7-4407, MCA, provides for an exemption from certain state regulation for certain municipality undertakings financed through municipal bonds. Neither

 \S 7-7-4407, MCA, nor any other provision of the Bond Act were considered in the PSC's Declaratory Ruling.

In January 1999, following discussions on the probable effect of the Bond Act, the PSC determined that there is a reasonable basis to believe that the Bond Act may exempt Helena from PSC motor carrier regulation. The PSC also determined that it would stay enforcement of Class D motor carrier laws against Helena pending a PSC proceeding to obtain carrier and public comment on the question. The PSC's action staying enforcement was done in good faith anticipation that a proceeding would be commenced soon thereafter and in that proceeding interested persons would have an opportunity to participate prior to any final PSC determination on the question. As several of those parties responding to this NOI have noted, with objection, the proceeding was not commenced until September 15, 1999, much later than anticipated. The delay was extensive, but has no

Summary of Comments / Arguments Submitted

bearing on the merits of this matter.

Helena argues that § 7-7-4407, MCA, is an exemption from PSC motor carrier regulation and is applicable in Helena's transfer station operations. In regard to application of the Bond Act and the exemption, Helena asserts that its transfer station is a solid waste management system, licensed as such by the state of Montana, and is financed through municipal revenue bonds,

payments of which are funded through fees and taxes. Helena submitted documents verifying these assertions. Helena also argues that PSC regulation will impair Helena's ability to make payments on the transfer station revenue bonds.

The Montana Solid Waste Contractors Association (SWC) and City-County Sanitation, Inc. (CCS), argue that Helena has submitted no proof that its operations will be impaired by the PSC's previous determination that Helena's operations require Class D motor carrier authority (i.e., PSC's November 20, 1995, Declaratory Ruling). SWC and CCS also argue that § 7-7-4407, MCA does not exempt Helena from PSC regulation because the statute is archaic, has remained unamended since 1939, and is in direct conflict with numerous Montana statutes, including PSC-administered Class D motor carrier statutes, which have been enacted since the Bond Act. SWC and CCS argue that there is a conflict between provisions of the Bond Act and Class D motor carrier provisions and applicable rules of statutory construction demand that the conflict be

resolved in favor of PSC regulation. SWC and CCS argue that City of Helena v. Department of Public Service Regulation, 194 Mont. 173, 634 P.2d 192 (1981), rejected arguments made by both the City of Helena and the City of Billings that § 7-7-4407, MCA, controls over inconsistent state statutes.

Discussion

In regard to arguments pertaining to any impairment of Helena's ability to make payments on its transfer station revenue bonds that might result from PSC regulation, the PSC determines that the effect of PSC regulation and the associated costs of compliance with that regulation would most probably be insignificant. However, the PSC determines that arguments on this point are not relevant to any determination regarding whether or not Helena is exempt from PSC regulation pursuant to § 7-7-4407, MCA. The Bond Act, including § 7-7-4407, MCA, if applicable, applies regardless of whether PSC regulation would hinder Helena's operations or impair Helena's ability to make payments on the transfer station revenue bonds. Nothing in the Bond Act, including at § 7-7-4407, MCA, identifies impairment of a municipality's ability to make payments as a criterion governing application of § 7-7-4407, MCA. In relevant part § 7-7-4407, MCA, essentially provides that a municipality, which Helena

is, that is engaged in an "undertaking" (i.e., generally, a revenue-producing facility or service, \S 7-7-4402(3)(e), MCA, including a solid waste

management system, § 7-7-4407(3)(e), MCA, financed by bonds self supported through fees charged for the facility or service, including through taxes, §§ 7-7-4423 through 7-7-4425, MCA), which Helena's solid waste transfer station is, is not required to obtain a certificate (e.g., PSC-administered Class D certificate of public convenience and necessity, § 69-12-314, MCA) from the state to operate that undertaking. All elements required of an undertaking are met in regard to Helena's operation of its transfer station (i.e., the transfer station is a licensed solid waste management system, is financed through bonds,

and the bonds are paid through gross revenues derived operations, including taxes). SWC and CCS do not appear to dispute in any significant way that Helena's transfer station is an undertaking within the meaning of that term in the Bond Act. To the extent there is dispute, the PSC hereby determines that Helena's transfer station is an undertaking.

SWC and CCS primarily argue that the Bond Act conflicts with numerous statutes enacted since the effective date of the Bond Act (e.g., statutes pertaining to air quality, pollution control, stream protection, hazardous waste, facility siting, and so forth). SWC and CCS argue that it would not be legally correct or in the public interest to conclude that the archaic Bond Act should prevail over these important statutes. That may be the case, but how conflicts between the Bond Act and state statutes not administered by the PSC should be resolved is not a question before the PSC. The question before the PSC pertains to the Bond Act and PSC-administered

Class D motor carrier statutes.

The issue in the SWC- and CCS-referenced City of Helena, supra., pertained to PSC regulation of municipal water rates. The municipalities involved argued the Bond Act controlled over PSC utility statutes which had been enacted prior to the Bond Act. The Court was considering whether the Bond Act had repealed PSC statutes which had been enacted in the Public Utilities and Carriers Act in 1913 (Utilities Act). The Court noted that the Bond Act did not expressly repeal the Utilities Act and repeal by implication would not be favored. City of Billings, 194 Mont. at 179-180. The Court then determined that the statutes were in conflict, the intention of the legislature would control in harmonizing the statutes, and that the legislative intent is that initial rates will be set by municipalities and, because nothing in the Bond Act precludes PSC review, the PSC will review those initial rates. Id., 194 Mont. at 180.

The PSC determines that City of Helena includes guidance on a procedure to follow in resolving conflicts between statutes, but it cannot be deemed precedent in resolving the question of how the Bond Act relates to PSC-administered Class D motor carrier statutes. In regard to the Bond Act and PSC-administered statutes City of Helena dealt with the reverse of what is presented now. The present question is not whether the Bond Act has repealed previous PSC-administered statutes, but whether the Bond Act has been repealed by subsequent PSC-administered statutes.

In following the analysis applied in City of Helena the PSC determines that Class D motor carrier statutes (circa 1977) do not expressly repeal the Bond Act. There is no mention of the Bond Act in PSC-administered Class D statutes. Continuing with the analysis of City of Helena, the next step involves harmonizing the statutes or concluding there is implicit repeal. PSC will not conclude there is implicit repeal. First, implicit repeal is not favored. City of Helena, supra. Second, such action would be clearly contrary to the Bond Act, which expressly provides that if any provisions within the Bond Act are inconsistent with the provisions of other laws the Bond Act controls. § 7-7-4403(3), MCA. In this regard the PSC concludes that in relation to PSC-administered Class D motor carrier laws the Bond Act, archaic or not, remains

valid law. The Bond Act, particularly § 7-7-4407, MCA, is an exemption from PSC Class D motor carrier laws.

Order Section 7-7-4407, MCA, exempts the City of Helena from Title 69, Ch.12, MCA, requirements pertaining to Class D motor carriers. So long as the City of Helena operates its transfer station in a manner in which Title 7, Ch. 7, part 44, MCA, remains applicable, the City of Helena does not require Class D motor carrier authority to transport solid waste from Helena's solid waste transfer station to the local landfill.

Done and dated this 26th day of October, 1999, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE	FISHER,	Chair	-			
NANCY	MCCAFFI	7 प्रमुट	7ice	Chair		

BOB	ANDERSON,	Commissioner

GARY FELAND, Commissioner

ATTEST:

Kathlene M. Anderson Commission Secretary

(SEAL)

NOTE: Procedures for objection to this Proposed Order are as provided

in the text above.